v. *Yeoh Kee Tin* [1] per Buhagiar J. who delivered the judgment of the Court of Appeal as follows:—

"I do not think that this is so; there is nothing in that section affecting the general principles of evidence regarding the burden of proof as laid down particularly in section 103 of the Evidence Ordinance, 1950; under that section the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact is to lie on any particular person. In that case the tenant (appellant) alleged that the rent of $130 a month was in excess of the standard rent; the burden of proving such fact was, therefore, on him....."

In this case it was the assertion of the tenant (the defendant) that the premises were controlled premises as it is situated within the municipal area. The defendant has not adduced one scrap of evidence to show that was the case, apart from saying that the house was built before 1943. Indeed, the plaintiff has adduced evidence, although uncalled for at that stage of the proceedings, in the person of the municipal inspector to show where the house was and in his words, "that they were looking after that village because they do not have their own local council. It is not within the municipal area."

On the second point the respondent's tenancy stems from the tenancy agreement between him and Balakrishnan and the rent was stated as $55 per month with option to the landlord to take back the furniture. It is not clear what happened to the furniture but it would appear from the defendant's letter to Balakrishnan that the furniture was unusable and that it had been surrendered back to Balakrishnan. The agreement does not stipulate for apportionment of rent. Since the premises and the furniture were let at an entire rent no apportionment can be made for the rent of the premises when the furniture is returned or unused as the rent issues from the land alone.

Consequently the appeal of the appellant will be allowed and the order of the learned president set aside. There will be substituted a judgment for the appellant for arrears of rent totalling $785 as prayed, order for vacant possession of the said premises and double rent for the period from 1st August 1964 to the date of surrender of vacant possession and costs.

Appeal allowed.

Solicitors: *Heng, Chen & Co.; K. Raja Nayagam.*

LIM SENG CHOON & OTHERS v. PUBLIC PROSECUTOR

[A.Cr.J. (Wan Suleiman J.) June 15, 1966]
[Kota Bharu — Criminal Appeal No. 11 of 1966]

Gaming — Assisting in the carrying on a public lottery — Presumption — Offending exhibits — Collective possession of — Forfeiture of money found on accused — Common Gaming Houses Ordinance, 1953, ss. 4(1)(c), 11 and 16(2).

Criminal Law and Procedure — Charge — Joinder of — Omission of word "jointly" — Whether prejudicial.

This was an appeal against the conviction of the appellants on a charge under section 4(1)(c) of the Common Gaming Houses Ordinance. As a result of a raid the police found the appellants with a number of documents relating to a public lottery. It was argued on appeal that the charge was bad as the word "jointly" was not used in it, that there was no proof of individual possession of the exhibits and that the presumption in the Ordinance applied only where exhibits were found in the possession of an individual.

Held: (1) the omission of the word "jointly" did not in the circumstances of this case prejudice the appellants at the trial and the defect, if any, was curable under section 422 of the Criminal Procedure Code;

(2) there was ample evidence of collective possession of the exhibits in this case;

(3) the presumption in the Common Gaming Houses Ordinance was as applicable to a case of joint possession as it was in a case of individual possession.

Case referred to:—

(1) *Chan Pean Leong* v. *Public Prosecutor* [1956] M.L.J. 237.

CRIMINAL APPEAL.

C. O. Lim for the appellant.

Mohamed Azmi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the respondent.

Wan Suleiman J.: This is an appeal against conviction brought by the eight appellants who had been charged in the sessions court, Kota Bharu with assisting in the carrying on of a public lottery of the variety commonly called the character lottery, an offence under section 4(1)(c) of the Common Gaming Houses Ordinance, 1953.

Briefly the facts of the case are as follows:

At about 2.35 p.m. on 21st November 1965 a police party led by PW1 and PW2 raided a house, No. 156 Jalan Pasar Lama, Kota Bharu. In an upstairs room they found the eight appellants seated at three tables. Various documentary exhibits were found on these tables, as well as a plentiful supply of instruments for writing.

Expert evidence indicated that of the documents found, those with figures on them pertain to character lottery, and the presence of what he called the master schedule, exhibits 34 & 47 would tend to show that the appellants were promoters. Mr. C. O. Lim for appellants conceded that these documents were indeed what the expert witness said they were.

I need only deal with three of the grounds advanced by Mr. C. O. Lim on behalf of the appellants.

In the first of these Mr. Lim contended that the court below had erred in law and in fact in

holding that "all the eight accused persons were charged jointly" when in fact they had not been so charged.

It is true that the word "jointly" which appeared in an earlier charge had been omitted when an amended charge was put in at a later stage of the trial.

The fact that the appellants had been jointly tried cannot be a matter of doubt. It became clear whilst this ground was being argued that learned counsel wished to confine his arguments to a point of law *viz*: that the omission of the word "jointly" rendered the charge defective.

I am unable to find any authority to support this proposition of law, nor indeed could learned counsel for the appellants. On the evidence, the appellants had collectively committed the same offence, namely that of assisting in the carrying on of a public lottery and were in my view properly charged and tried together in accordance with section 170 of the Criminal Procedure Code.

Indeed, even if the inclusion of the word is required by the law, the appellants were represented in the court below by a counsel of considerable experience and there is nothing on the record to indicate that they were not fully aware that they were being jointly charged and tried. No injustice had therefore resulted from the omission, if omission it is, and the defect if any would therefore be curable under section 422 of the Code.

The next ground which I propose to consider, is the argument that there must be proof of individual possession or in other words that prosecution should adduce evidence to show that certain specific exhibits were in the sole possession of a specific appellant. In fact, at the trial, this was precisely what the prosecution sought to do.

However I am in complete agreement with the learned senior president when he held that all the circumstances surrounding the discovery of the appellants in a secluded back room, difficult of access, a room furnished as an office, and equipped with a warning system — would justify one and only one inference: not an inference that they were sitting down to a friendly tea party, or were paying one another a social call, but that they were, as the charge alleged, collectively concerned in the carrying on of a public lottery.

I have carefully considered the evidence in the light if the test enunciated by Thomson J. (as he then was) in the case of *Chan Pean Leong* v. *Public Prosecutor*.[1] I am completely satisfied that possession for the purposes of criminal law there was, and that such possession was collective.

I have also considered the ingenious argument advanced by Mr. Lim that the presumption in section 11 of the Common Gaming Houses Ordinance, 1953 operates only in those cases where the offending exhibits are found in the sole possession of an individual, and that where there is joint possession, the presumption cannot be invoked. I regret that I am unable to agree with that argument. Since there is nothing in the context of that section inconsistent with the view I hold, nor is there anything in the Ordinance which provides otherwise, the word "person" shall include any body of persons, corporate or unincorporate, in accordance with section 2 of the Interpretation and General Clauses Ordinance, 1948.

The appeal against conviction and sentence was therefore dismissed except in regard to the order of forfeiture made by the learned president in respect of various sums of money found in the pockets of seven of the appellants. When one considers the evidence of the expert PW3 that the total value of the sum punted was over $5,000, neither section 16(2) of the Ordinance, nor section 407 of the Criminal Procedure Code can, in my view fairly apply to modest sums so found and I therefore ordered the return of the money found on their persons to the appellants concerned.

Order accordingly.

Solicitors: *Lim, Lim & Oon.*

MALAYAN MINERS CO. (M) LTD. v. LIAN HOCK & CO.

[O.C.J. (Winslow J.) June 17, 1966]

[Singapore — Suit No. 695 of 1964]

Contract — Sale by auction — When property passes — Fraudulent misrepresentation — Innocent misrepresentation that goods are in good condition — Whether contract can be rescinded for innocent misrepresentation — Sale of Goods Act, 1893, ss. 18 and 58.

In this case the defendants had made a successful bid for a tournadozer which was described in the auctioneer's list as being in good condition. The written contract of sale contained a condition that the lots were sold as they lie with all faults and errors of description. After the sale the defendants alleged that the tournadozer was not in good condition. It was subsequently resold and the plaintiffs thereupon claimed the sum of $3,905.50 being the difference on the resale and costs. The defendants pleaded that there was innocent misrepresentat on on behalf of the plaintiff that the tournadozer was in good condition or alternatively that there had been fraudulent misrepresentation by the auctioneers on behalf of the plaintiff.

Held: (1) on the facts there was no fraudulent misrepresentation on the part of the plaintiff or his agents;

(2) even if there had been innocent misrepresentation the remedy for it was damages for breach of warranty and not rescission and as no claim for damages was made in this case by the defendant, the court could not come to any finding on it;

(3) the plaintiff was therefore entitled to damages for breach of contract.